

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kaitlin Campbell	Team: Squad #13	CCRB Case #: 201707177	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/26/2017 3:00 AM	Location of Incident: St. Nicholas Avenue and West 149th Street; Inside the 30th Precinct stationhouse	Precinct: 30	18 Mo. SOL 2/26/2019	EO SOL 2/26/2019	
Date/Time CV Reported Thu, 08/31/2017 12:40 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 08/31/2017 12:40 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Nugent	16211	950962	PBMN SU
2. LT Brian Holshek	00000	944657	PBMN SU
3. LT Benjamin Gottlieb	00000	921389	030 PCT
4. An officer			Unknown
5. DT2 James Sepulveda	03405	892063	PBMN SU

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jose Tavarez	02044	949716	PBMN SU
2. POM Christophe Padro	21692	963192	030 PCT
3. POM Anthony Raimone	30240	954257	PBMN SU

Officer(s)	Allegation	Investigator Recommendation
A.LT Brian Holshek	Abuse: At St. Nicholas Avenue and West 149th Street in Manhattan, Lieutenant Brian Holshek stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.DT2 James Sepulveda	Abuse: At St. Nicholas Avenue and West 149th Street in Manhattan, Detective James Sepulveda frisked § 87(2)(b)	
C.DT2 James Sepulveda	Force: At St. Nicholas Avenue and West 149th Street in Manhattan, Detective James Sepulveda used physical force against § 87(2)(b)	
D.LT Brian Holshek	Abuse: At St. Nicholas Avenue and West 149th Street in Manhattan, Lieutenant Brian Holshek searched § 87(2)(b)	
E.LT Brian Holshek	Abuse: At St. Nicholas Avenue and West 149th Street in Manhattan, Lieutenant Brian Holshek searched the vehicle in which § 87(2)(b) was an occupant.	
F.POM John Nugent	Abuse: At St. Nicholas Avenue and West 149th Street in Manhattan, Police Officer John Nugent searched the vehicle in which § 87(2)(b) was an occupant.	
G. An officer	Abuse: At St. Nicholas Avenue and West 149th Street in Manhattan, an officer searched the vehicle in which § 87(2)(b) was an occupant.	

Officer(s)	Allegation	Investigator Recommendation
H.LT Benjamin Gottlieb	Abuse: Inside the 30th Precinct stationhouse, Lieutenant Benjamin Gottlieb did not process § 87(2)(b) s complaint regarding officers.	
§ 87(4-b), § 87(2)(g)		

## Case Summary

On August 26, 2017, § 87(2)(b) walked into the 32nd Precinct stationhouse and filed this complaint (original log #17-32942), a spinoff of which was forwarded to the CCRB on September 1, 2017 (log #2017-33280) (Board Review 01). On September 1, 2017, § 87(2)(b) also walked into the CCRB and filed this complaint.

On August 26, 2017, at approximately 3:00 a.m., § 87(2)(b) sat in the back passenger seat of § 87(2)(b)'s cab—a § 87(2)(b) decal on the bumper—heading north on St. Nicholas Avenue in Manhattan when an unmarked police car of officers from Patrol Borough Manhattan North Anti-Crime (PBMN-SU) pulled the cab over at West 149th Street (**Allegation A: Abuse of Authority,** § 87(2)(g)).

Det. James Sepulveda frisked § 87(2)(b) through the open car window (**Allegations B: Abuse of Authority,** § 87(2)(g)). Det. Sepulveda pulled § 87(2)(b) by his wrist out of the car (**Allegation C: Force,** § 87(2)(g)). Lt. Brian Holshek searched § 87(2)(b) (**Allegation D: Abuse of Authority,** § 87(2)(g)). Lt. Holshek, PO Nugent and an unidentified officer searched the backseat of the car (**Allegations E and F: Abuse of Authority,** § 87(2)(g)). § 87(2)(g) (**Allegation G: Abuse of Authority,** § 87(2)(g)). The officers got back into their car and drove away.

§ 87(2)(b) asked § 87(2)(b) to drive to the 30th Precinct stationhouse where he spoke with PO Christophe Padro of that precinct. § 87(2)(b) told PO Padro he wanted to file a complaint and PO Padro informed Lt. Benjamin Gottlieb, who did not process § 87(2)(b)'s complaint (**Allegation H: Abuse of Authority,** § 87(2)(g)).

§ 87(4-b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

## Findings and Recommendations

**Allegation (A) Abuse of Authority: At St. Nicholas Avenue and West 149th Street in Manhattan, Lieutenant Brian Holshek stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation (B) Abuse of Authority: At St. Nicholas Avenue and West 149th Street in Manhattan, Detective James Sepulveda frisked § 87(2)(b).**

**Allegation (C) Force: At St. Nicholas Avenue and West 149th Street in Manhattan, Detective James Sepulveda used physical force against § 87(2)(b).**

**Allegation (D) Abuse of Authority: At St. Nicholas Avenue and West 149th Street in Manhattan, Lieutenant Brian Holshek searched § 87(2)(b).**

**Allegation (E) Abuse of Authority: At St. Nicholas Avenue and West 149th Street in Manhattan, Lieutenant Brian Holshek searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (F) Abuse of Authority: At St. Nicholas Avenue and West 149th Street in Manhattan, Police Officer John Nugent searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (G) Abuse of Authority: At St. Nicholas Avenue and West 149th Street in Manhattan, an officer searched the vehicle in which § 87(2)(b) was an occupant.**

According to § 87(2)(b) and § 87(2)(b) § 87(2)(b) got into the cab at St. Nicholas Chess & Backgammon Club at 91 Edgecombe Avenue in Manhattan at approximately 2:55 a.m. with a backpack and asked to be driven home to § 87(2)(b). § 87(2)(b) drove without committing any traffic infractions and then saw police lights in his rearview mirror coming from a black unmarked Chevy Impala as he passed West 148th Street, and pulled over just before West 149th Street. § 87(2)(b) asked § 87(2)(b) what was going on and saw police lights reflected in the dashboard. § 87(2)(b) pointed his thumb toward the back of the car and § 87(2)(b) saw the black Chevy Impala.

§ 87(2)(b) said four officers in plainclothes got out of the car: a white male officer with dark hair who was about 5'6" tall, had a slightly heavyset build, and looked to be about 50 years old; a white male officer with brown hair who was about 6' tall with a slim build, and looked to be about 32 years old; and two white male officers with dark hair who were both about 6'3" tall, muscular, and looked to be in their 30s.

§ 87(2)(b) saw three officers exit the car: a white male officer who was short and "kind of fat," and two white male officers who were tall—about the same height—and muscular. § 87(2)(b) said the short, fat officer approached his window and asked him how he was doing, where he was headed, where he picked § 87(2)(b) up, and whether § 87(2)(b) called for the cab. § 87(2)(b) answered the officer and told him § 87(2)(b) did call and that he saw this through his dispatcher tablet.

§ 87(2)(b) said the 6' tall officer stood by his door initially and was joined shortly after by the short, 50-year-old officer, who approached § 87(2)(b)'s open window, asked him how he was doing, and asked him how § 87(2)(b) was doing. § 87(2)(b) told the officer he was fine, and that § 87(2)(b) was "doing good so far."

According to § 87(2)(b) the short, 50-year-old officer reached his arm through the open window and patted and gripped a plastic iPhone holster clipped to the right side of § 87(2)(b)'s waistband for about four seconds. § 87(2)(b) put both of his hands up and the officer withdrew his arm and asked § 87(2)(b) to step out of the vehicle. § 87(2)(b) said he did not feel safe getting out of the vehicle and the short, 50-year-old officer opened the door and said: "Get the hell out of the vehicle." § 87(2)(b) kept his hands up and began to slowly get out of the car. The short, 50-year-old officer grabbed § 87(2)(b)'s right wrist and pulled him out of the car. The slim, tall officer who had originally approached his window patted § 87(2)(b)'s arms on the outside of his clothing, then his torso, and then the front of § 87(2)(b)'s shorts; § 87(2)(b) described in detail how the officer touched his penis.

§ 87(2)(b) said he heard another officer ask § 87(2)(b) to step out of the car and that § 87(2)(b) did not get out of the car immediately but sat in silence for about thirty seconds and then got out of the car. § 87(2)(b) did not remember whether or how any officer responded to § 87(2)(b)'s reluctance to get out of the car or who ultimately opened the door to the car. After § 87(2)(b) stepped out of the car, § 87(2)(b) heard an officer speaking with § 87(2)(b) for about two minutes but he could not hear what they were saying or see what was happening.

§ 87(2)(b) said the short, 50-year-old officer held his wrist for the twenty seconds it took the 6' tall officer to frisk § 87(2)(b) and then the short, 50-year-old officer guided § 87(2)(b) by his wrist toward the back of the cab. § 87(2)(b) stood at the back of the cab and watched the 6' tall officer, along with the two tall muscular officers search the backseat of the car from both sides.

§ 87(2)(b) said one of the tall muscular officers entered the car from the rear passenger door, picked the seat up, looked underneath, looked inside § 87(2)(b)'s bag, got out of the car, and said to the other tall, muscular officer "there's nothing here."

§ 87(2)(b) said that as he stood at the back of the car, the short, fat officer poked his shoulder and asked him repeatedly whether he knew about robberies taking place. § 87(2)(b) asked the officer what his name was and what command he was from and the officer said "Sovenach," from "Manhattan North." § 87(2)(b) did not know the correct spelling of "Sovenach." The 6' tall officer told § 87(2)(b) he smelled like marijuana and § 87(2)(b) said he had not smoked anything. Shortly after, the officers got back into their car and drove away. When § 87(2)(b) got back into the car, his backpack was only partially zipped. It had been fully zipped before he got out of the car.

No officer with a variation of the name "Sovenach" was found in the MOS roster through the CCRB's Complaint Tracking System (CTS). The investigation requested roll calls from all known precinct or commands active in the vicinity at the time of the incident. Of the roll call/movement log documents requested, only PBMN-SU and SRG listed RMPs with four officers assigned to them. SRG listed only one RMP with four officers in it and was ruled out because one of the officers assigned to that car was a black man.

PBMN-SU's roll call listed three RMPs that were active on August 26, 2017: RMP #9975, RMP #371, and RMP #756 (Board Review 02). The officers in RMP #9975 were initially ruled out because the sergeant assigned to it was a dark-skinned Hispanic man. RMP #371 was initially ruled out because none of the officers assigned to the car were above the age of 40 and the § 87(2)(b)-old officer, Sgt. Perez, was a dark-skinned Hispanic man. RMP #756 was assigned to Det. Sepulveda, a § 87(2)(b)-old white man—5'5" tall, 185 pounds—with black hair and brown eyes, who matched the description for "Sovenach"; Lt. Holshek, a § 87(2)(b)-old white man—6'1" tall, 190 lbs.—with brown hair and brown eyes, and matched the description for the 6' tall officer who frisked § 87(2)(b).

According to his memo book, Det. Sepulveda was assigned to RMP "173" with PO Nugent and PO Raimone from 5:30 p.m. on August 25, 2017 to 2:05 a.m. on August 26, 2017 and said in his interview he worked with PO Nugent, PO Tavarez, and Lt. Holshek in an unmarked Ford Taurus. Det. Sepulveda did not make any memo book entries after 8:30 p.m. on August 25, 2017 and marked his end of tour at 6:05 a.m. (Board Review 13). According to the PBMN-SU roll call, there is no RMP #173 and even if Det. Sepulveda meant RMP #371, he was listed as being assigned to RMP #756. Det. Sepulveda said in his interview the car he was in was an unmarked Ford Taurus, that the duties of his assignment was to look for people suspected of committing robberies or violent felonies in the confines of PBMN, specifically focusing on the 32nd and 25th Precincts. Det. Sepulveda said he did not recall the incident and he denied all of the allegations.

Lt. Holshek said he worked from 5:15 p.m. on August 25, 2017 to 6:05 a.m. on August 26, 2017 but marked in his memo book his end of tour was at 2:00 a.m.; he did not make any memo book entries past 8:30 p.m. (Board Review 14). Lt. Holshek wrote in his memo book and said aloud that he was assigned to unmarked RMP #756 with Det. Sepulveda, PO Jose Tavarez, and PO Nugent and assigned to patrol the confines of PBMN. Lt. Holshek said he did not recall the incident and denied all of the allegations. Lt. Holshek said he did not have any information about what happened between 2:00 a.m. and 6:00 a.m. that could account for why he worked overtime except that an officer in PBMN may have made an arrest that he was assisting to process. According to BADS only one arrest was made by PBMN-SU officers during Lt.

Holshek's tour at 1:15 a.m. in the 32nd Precinct by a PO Darnell Jones, who was not listed on the roll call, for § 87(2)(b) (Board Review 15).

PO Nugent said he worked from 5:30 p.m. on August 25, 2017, to 6:05 a.m. on August 26, 2017 and was assigned to patrol PBMN to patrol for "crimes in progress" with Det. Sepulveda, Lt. Holshek, and PO Tavarez in unmarked RMP #756. PO Nugent also did not make any memo book entries past 8:30 p.m. on August 25, 2017 but could not account for his four hours of overtime during that tour (Board Review 16). PO Nugent said he did not remember the incident and he denied all of the allegations.

Although the roll call listed PO Raimone as the fourth officer assigned to RMP #756, PO Tavarez was interviewed on November 29, 2017, because he was listed in Lt. Holshek's and PO Nugent's memo books.

PO Tavarez, a § 87(2)(b) old Hispanic man—5'9 tall, 250 lbs.—with a bald head and brown eyes, said he worked from 5:30 p.m. on August 25, 2017 to 2:05 a.m. on August 26, 2017 with Lt. Holshek and PO Nugent in unmarked RMP #194, assigned to auto larceny patrol in the confines of the patrol borough. During his tour, PO Tavarez did not remember whether he worked with Det. Sepulveda or was ever in RMP #756.

There were no UF-250 reports prepared on the date of the incident in either the 30th or 32nd Precinct and there were no events listed in the event summary at the time and location of the incident (Board Review 07)(Board Review 08).

On January 5, 2018, § 87(2)(b) came to the CCRB and was shown an array of eight photos that included photos of Det. Sepulveda, Lt. Holshek, PO Nugent, PO Tavarez, PO Raimone, and PO Joseph Fratto, who was listed on the roll call that night and worked overtime until 6:05 a.m., according to his memo book (Board Review 17)(Board Review 18). The remaining two photos were of random officers. The photo array yielded no positive identifications.

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

**Allegation (H) Abuse of Authority: Inside the 30th Precinct stationhouse, Lieutenant Benjamin Gottlieb did not process § 87(2)(b)'s complaint regarding officers.**

According to § 87(2)(b) and § 87(2)(b) when § 87(2)(b) got back inside the car he asked § 87(2)(b) to drive him to the 30th Precinct stationhouse and they arrived within two minutes. § 87(2)(b) asked § 87(2)(b) to park the car and come into the stationhouse with him. § 87(2)(b) refused to do so but gave § 87(2)(b) his business card and told him to call if he needed his assistance.

According to § 87(2)(b) he walked into the 30th Precinct stationhouse and told PO Padro he wanted to speak with the lieutenant at the desk. PO Padro told § 87(2)(b) the lieutenant was busy but asked him to tell him what happened. § 87(2)(b) told PO Padro he wanted to file a complaint against officers and talked with PO Padro about the incident for about 30 minutes while PO Padro took notes. After he finished, PO Padro walked to the desk, and spoke with a woman he described as a “receptionist” and walked back to § 87(2)(b) shortly after and told § 87(2)(b) the complaint could not be filed there. § 87(2)(b) asked him why. PO Padro told § 87(2)(b) they could not take the complaint because they could not identify the officers.

§ 87(2)(b) left the stationhouse and took a cab to the 32nd Precinct stationhouse on 135th Street and filed the complaint there and it was recorded in the 32nd Precinct command log (Board Review 03).

PO Padro said that, after § 87(2)(b) told him he wanted to file a complaint against officers, he walked to the desk, told Lt. Benjamin Gottlieb, and asked Lt. Gottlieb what the process was. On the date of the incident, it was PO Padro’s first day working in the 30th Precinct and he said his understanding of the complaint process was to ask the commanding officer what to do. Lt. Gottlieb pointed to the CCRB poster hanging on the wall and told PO Padro to give § 87(2)(b) the phone number for the CCRB. PO Padro said he then walked over to § 87(2)(b) and told him to write down the phone number and/or email address for the CCRB listed on the poster. § 87(2)(b) wrote down the information on a piece of paper and left the stationhouse about fifteen minutes after he entered.

Lt. Gottlieb said he had no recollection of the incident but said that his understanding of the procedure for taking civilian complaints against officers is to interview the civilian then tell them their options, which include making a complaint at the stationhouse, calling 311, calling the CCRB’s number. Lt. Gottlieb said he interviews the civilian in the stationhouse if he has to, fills out a handwritten complaint report, and then calls the CCRB’s intake unit to report the complaint himself. Lt. Gottlieb said that PO Padro would not be able to fill out a complaint report himself and that a supervisor would have to. Lt. Gottlieb said he did not make a command log entry about a civilian coming in to make a complaint about an officer on August 26, 2017 (Board Review 04).

Patrol Guide procedure 208-31 states that the investigating supervisor of a command is responsible for interviewing civilians who alleged misconduct by uniformed members of service, and that the investigating supervisor must report all misconduct complaints to the CCRB. If a complainant wants to make a complaint in person, the supervisor must give the complainant a form, assist the complainant in filling it out, and call the complaint in to the CCRB’s intake unit. If the complainant wants to make the complaint later, the investigating supervisor should give that civilian a form, the CCRB’s phone number, and make a command log entry about it (Board Review 06).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

### Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint.
- In the course of his 31-year tenure with the NYPD, Det. Sepulveda has been the subject of 14 CCRB complaints and 39 allegations, one of which was substantiated. § 87(4-b) § 87(2)(g)
  - In case 200809710, a refusal-to-provide-name/shield number allegation was substantiated and Det. Sepulveda received Command Discipline – B. § 87(4-b) § 87(2)(g)
  - § 87(4-b) § 87(2)(g)
  - There have been two prior allegations stop (one vehicle)-, two prior search allegations (one vehicle), and two prior frisk allegations made against Det. Sepulveda.
- In the course of his 10-year tenure with the NYPD, Lt. Holshek has been the subject of 13 CCRB complaints and 39 allegations, four of which were substantiated. § 87(4-b) § 87(2)(g)
  - § 87(4-b) § 87(2)(g)



- In case 201110762, vehicle-stop and frisk allegations were substantiated and Lt. Holshek received charges and a command discipline, respectively.
- In case 201601011 vehicle-search allegation and frisk allegations were substantiated and Lt. Holshek received Command Discipline B for both. § 87(4-b) § 87(2)(g)
- There have been five prior stop (four vehicle)-, six prior search (four vehicle)-, and five prior frisk allegations made against Lt. Holshek.
- In the course of his six-year tenure with the NYPD, PO Nugent has been the subject of two CCRB complaints and two allegations, neither of which were substantiated. § 87(2)(g)
- In the course of his 19-year tenure with the NYPD, Lt. Gottlieb has been the subject of 11 CCRB complaints and 19 allegations, four of which were substantiated. § 87(4-b) § 87(2)(g)
- In case 200502082, question/stop- and search allegations were substantiated and Lt. Gottlieb received charges for both, respectively.
- In case 200703956, a force allegation was substantiated, for which Lt. Holshek received Command Discipline B and lost 15 vacation days. § 87(4-b) § 87(2)(g)
- In case 201110991, a discourtesy allegation was substantiated and Lt. Gottlieb received charges.
- § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) was offered mediation and he rejected.
- On January 24, 2018, a FOIL request was submitted to the NYC comptroller to determine whether a Notice of Claim was filed regarding this incident. The response will be included in the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.: 13

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date